

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

JOHN MICHAEL POWELL
PO Box 6526
Frazier Park, CA 93222

Case No. 2003-48

OAH No. 2009120391

And

JOHN MICHAEL POWELL
16525 Mill Potrero Highway
Pine Mountain Club, CA 93222

Registered Nursing License No. 451779

Respondent

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on August 30, 2010.

IT IS SO ORDERED July 30, 2010.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

Case No. 2003-48

JOHN MICHAEL POWELL
PO Box 6526
Frazier Park, CA 93222

OAH No. 2009120391

And

JOHN MICHAEL POWELL
16525 Mill Potrero Highway
Pine Mountain Club, CA 93222

Registered Nurse License No. 451779

Respondent.

PROPOSED DECISION

On March 4, 2010, in San Bernardino, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Kevin J. Rigley, Deputy Attorney General, Office of the Attorney General, represented complainant.

Phyllis M. Gallagher, Attorney at Law, represented respondent.

The matter was submitted on March 4, 2010.

FACTUAL FINDINGS

1. On June 17, 2009, Ruth Ann Terry, M.P.H., R.N., Executive Officer, Board of Registered Nursing of the State of California (Board), filed Petition to Revoke Probation No. 2003-48 in her official capacity. Respondent filed a timely Notice of Defense.

2. On March 31, 1990, the Board issued registered nurse license number 451779 to respondent and at all relevant times, the license was in full force and effect, and is valid until August 31, 2011.

3. On August 22, 2002, complainant filed an accusation against respondent alleging that he had been convicted of driving under the influence of alcohol, failure to appear, driving on a suspended license, and two other minor traffic offenses in 1999, and using alcoholic beverages before reporting to work on one occasion. An administrative hearing was held on March 12, 2004. In a Proposed Decision, the administrative law judge found that respondent had been convicted of driving under the influence of alcohol, and other traffic-related offenses, and had used alcoholic beverages to an extent or in a manner dangerous to him and the public, when he drank alcohol prior to reporting to work. The administrative law judge found that respondent had been drinking since he was 13 years old, he had been clean and sober for 11 years before relapsing in 1997, and he had been clean and sober since Thanksgiving 1999. Based upon these findings, the administrative law judge revoked respondent's license, stayed the revocation, and placed respondent on probation for five years on terms and conditions. The Board adopted the Proposed Decision on August 26, 2004, and it became effective on September 26, 2004.

4. The terms and conditions of respondent's probation included the following:

"2. COMPLY WITH THE BOARD'S PROBATION PROGRAM – Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

...

5. SUBMIT WRITTEN REPORTS – Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Petitioner shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

...

15. SUBMIT TO TESTS AND SAMPLES – Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the

Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period."

5. By letter dated December 4, 2006, the Board notified respondent that beginning on January 1, 2007, all probationers were required to complete a Quarterly Report, and the reports were to be submitted and postmarked no later than seven days after the close of each reporting period. The Board furnished respondent with the forms and informed him that his failure to submit the quarterly reports constituted a violation of probation.

6. Respondent violated condition number 5 of the probationary order when he failed to submit quarterly reports due in April, July, and October 2007, and July and October 2008.

7. Condition No. 15 of probation required respondent to call Compass Vision Monday through Friday between 5:00 a.m. and 5:00 p.m. Compass Vision maintained a record of each call respondent made and those dates when he was required to submit to a test. When advised that he had to submit to a test, he had until midnight of that day to submit to

the test. Respondent was also required to pay for the tests and keep his account current.¹ Respondent was tested randomly 18 times a year.

Respondent failed to comply with condition no. 15 of probation when he failed to call Compass Vision on a daily basis, missed tests, and failed to keep his account current at all times on the following dates:

February 5, 2007: Missed test, did not call, on hold;
February 16, 2007: Missed test, did not call;
February 19, 2007: Missed test, did not call;
June 19, 2007: Missed test, on hold;
July 5, 2007: Missed test, respondent called in but did not report for testing;
August 10, 2007: Missed test, did not call, not calling into the random system;
August 29, 2007: Missed test, did not call, not calling into the random system;
September 6, 2007: Missed test, did not call, on hold;
September 18, 2007: Missed test, did not call;
May 28, 2008: Missed test, did not call;
June 5, 2008: Missed test, did not call;
June 30, 2008: Missed test, on hold;
July 7, 2008: Missed test, did not call;
July 9, 2008: Missed test, did not call;
September 11, 2008: Missed test, did not call, on hold;
October 1, 2008: Missed test, did not call, on hold;
November 19, 2008: Missed test, did not call, on hold;
November 24, 2008: Missed test, did not call, on hold; and
December 8, 2008: Missed test, did not call, on hold.

8. Kathy Bazil was assigned by the Board to serve as respondent's probation monitor. On October 3, 2007, Ms. Bazil prepared a Notice of Violation and mailed it to respondent. The Notice indicated that respondent had violated several of the terms of probation, including condition numbers five and 15. The Notice listed the quarterly reports respondent had not submitted, and the dates he had missed tests, not called Compass Vision, and not kept his account current. In addition to the nine dates specifically listed between February 5 and September 18, 2007, the Notice indicated respondent failed to call in from July 25 to September 13, 2007.

9. The Board maintains a file that contains all documents relating to a registered nurse placed on probation. It also contains printouts of e-mails sent by a probationer and the probation monitor.

Respondent's probation file did not contain any documented response to the October 3, 2007 Notice of Violation. Respondent did not submit the missing quarterly

¹ Respondent chose the laboratory where he was to be tested. He then had to provide a credit card or bank account from which the \$58 test fee was paid. If respondent did not pay for a test, his account was placed on "on hold."

reports and offer any explanation for his missed tests, failure to call Compass Vision, and failure to maintain his account.

The first conversation between respondent and Ms. Bazil occurred on April 18, 2008, which Ms. Bazil confirmed in an e-mail she wrote to respondent that day. She indicated that she advised respondent that he was still in violation of probation, and he had to respond to the Notice of Violation, including an explanation for the missed tests, complete the quarterly reports, and provide updates on the medications he was taking. She gave respondent ten days to comply, and informed respondent that if he failed to do so, she would forward the matter back to the Attorney General. Respondent received the e-mail that day and notified Ms. Bazil that he had received it.

On April 28, 2008, respondent wrote an e-mail to Ms. Bazil. He indicated that he could not find the Notice of Violation letter. He wrote that he was out-of-state on vacation during several periods of time in July, August, and September, and he explained that for a long period of time, he did not call because he owed the laboratory money, and had not paid it. He thought he did not need to call. Ms. Bazil responded to this e-mail by sending respondent a copy of the Notice of Violation letter.

On May 12, 2008, respondent sent an e-mail to Ms. Bazil, and informed her that he had injured his back the previous week, and was unable to go anywhere except to a doctor's appointment and could see a doctor only with a driver. He indicated he was taking Valium for muscle spasm and would be seeing a neurologist.

Respondent submitted a certification regarding his medical condition signed on May 12, 2008 by Robert Hartzell, a chiropractor, which indicated that respondent was being seen by a neurologist shortly, and two to three weeks of care was anticipated. Respondent sent Ms. Bazil e-mails on June 7 and 9, in which he described his medical condition, and medications he was taking. He reported on July 8 that he was still on disability and was being treated with medications.

In an e-mail dated May 8, 2008, Ms. Bazil wrote to respondent that she was in the process of preparing his file to be sent back to the Attorney General based on the violations she documented in the Notice of Violation. She wrote that this was the final reminder that he remained in violation of probation, and what he needed to do. On May 11, 2008, Ms. Bazil repeated that she needed a written explanation from respondent for the missed drug screens, and the reason that he missed calling in multiple times. She wanted the information by August 15. Respondent provided information on other matters, but provided nothing regarding the quarterly reports and random testing.

10. On December 15, 2008, Ms. Bazil sent respondent a Final Notice of Violation. It contained the violations of condition numbers 5 and 15, respondent committed as found in paragraphs 6 and 7, above.

11. Respondent is 58 years old, married, and the father of four adult children. He attended College of the Canyons, completing his nursing program in December 1989. In

2004, when he was placed on probation, respondent worked at Kern Valley Hospital in Lake Isabella. He remained there until 2006, when he started working for Clinica Sierra Vista at the Frazier Mountain Community Health Center. Clinica Sierra Vista is comprised of 24 community clinics in the Bakersfield and Fresno areas. Respondent worked in urgent care as an RN supervisor of medical assistants. Respondent injured his back in April 2008, and was off work for periods of time. On August 15, 2008, respondent was terminated from his employment because he had used all his allotted time off, and he has not worked since.

Respondent's back injury consisted of a bulging disc and narrowing in the lumbar spine. The MRI showed his back, in respondent's words, "was trashed." He was treated by a chiropractor three days a week, and was able to walk with a cane or walker. A neurologist treated his pain with narcotics which caused him, and again in his words, to be "gorked."

Respondent testified that when his probation began, he did not have to file quarterly reports. He explained he did not submit them to his probation monitor starting in 2007 because he thought they were the same as the reports his employer submitted. He did not explain why, after he was notified that he was in violation for failing to file them, that, except for one quarterly report that he filed, he continued to fail to file them.

Regarding his failure to call Compass Vision, respondent offered a number of explanations. He testified he had a dental appointment and missed one, and missed another because he was driving to Oregon. He also pointed out that he lived about 55 miles from the closest laboratory and driving time was an hour each way, and that was on top of the one to two hours required for the taking of the test. In addition, respondent complained about the cost of the test, which exceeded \$100 when the cost of gas is added. As a result, respondent did not always have the funds to keep his account current. He then stopped calling when his account was placed on hold. After his injury, respondent testified he could not drive himself and was unable to arrange transportation. He noted his wife worked full-time, and could not take time off to drive him to the lab.

Respondent testified he told Ms. Bazil about the reasons for his missed calls "in general conversation." He added that he sent her his medical records, but the Board's probation file did not contain copies of the records.

Respondent testified his only problem is alcohol. He has been taking narcotics prescribed by Dr. Edwin Zong, a pain management specialist. Over time, his physical problems such as excessive weight, diabetes, and high blood pressure, have improved, and he believes he is now ready to return to work.

12. Sharon Powell is respondent's wife, and a nurse practitioner since 1981. She testified she has not seen him under the influence of alcohol since his sobriety date, and he has support from his pastor and friends. She pointed out respondent was not taking much medication any longer, and emotionally and physically he is ready to return to work.

13. Dr. Melvin Silverman sent a letter dated April 23, 2008 to Ms. Bazil. He wrote he was respondent's primary physician, was aware that respondent was an alcoholic

and on probation, and was respondent's onsite monitor at Clinica Sierra Vista. He described the medication regime respondent received, and indicated it was working on respondent's various physical ailments. He added that as respondent's site monitor, he has never noticed any behavior, which would indicate any substance abuse or intoxication.

On August 15, 2008, Dr. Silverman wrote another letter to Ms. Bazil and indicated respondent was originally prescribed Valium and Percocet, and as a result, respondent was instructed not to drive. He noted respondent then returned to limited work activities on July 31 and was able to drive.

14. Dr. Zong wrote an e-mail on March 2, 2010 in connection with the hearing. He has been treating respondent for chronic back pain. He noted respondent's physical condition improved significantly, and now required fewer drugs. He added that while respondent was at the clinic, he never noticed respondent under the influence of alcohol or detected the odor of alcohol on his breath.

15. Respondent submitted several letters in support of his effort to retain his registered nurse license. Stephen Schilling, the CEO of Clinica Sierra Vista, wrote that whenever a drug test was positive, respondent always had a prescription that covered the medication.

Father Ryan Rumbley wrote that he has known respondent for almost five years and has found respondent to be a sober, honest person with high moral standards. He added that respondent was a member of the Worship Team, and was willing to go out of his way to help people.

Mark Gordon, a registered nurse, wrote that he has known respondent for eight or nine years, and has never seen him use any mind-altering chemicals. He has found respondent to be an excellent nurse with a wonderful work ethic.

Kristin Wilbur, a registered nurse, wrote that she worked with respondent at Kern Valley Hospital for two years, and found him to be professional, competent, and caring.

The Hughes family, patients of respondent and his wife, also wrote a letter in support of respondent.

LEGAL CONCLUSIONS

1. Cause to revoke probation and impose the order of revocation of respondent's registered nurse license for violation of condition no. 2 was established by Findings 3 through 7.

2. Cause to revoke probation and impose the order of revocation of respondent's registered nurse license for violation of condition no. 5 was established by Findings 3 through 6.

3. Cause to revoke probation and impose the order of revocation of respondent's registered nurse license for violation of condition no. 2 was established by Findings 3, 4, and 7.

4. Respondent violated the condition of probation that required him to submit quarterly reports. The requirement for the preparation of quarterly reports began in 2007, and during the 2007 and 2008 calendar years, respondent submitted just one. His explanation — that he believed the employer's report satisfied this requirement — is not credible. The requirement was explained to him in a letter, and after he failed to file the reports during 2007, Ms. Bazil notified him in the first Notice of Violation that his failure to file them constituted a violation of probation. He should have known in early 2007, and certainly no later than October 3, 2007, that he should have been submitting them, but he only submitted one.

The same is true of respondent's failure to call Compass Vision and submit to the required tests. Respondent knew what was required, was advised in the first Notice of Violation that he had failed to satisfy the requirement, had been asked to provide explanations, failed to provide satisfactory explanations, and then violated the requirement again. His explanation at the hearing does not excuse his numerous violations of condition no. 15.

The issue then is the appropriate penalty. The reason for imposition of random testing in 2004 was and continues to be respondent's alcoholism. Respondent complied entirely with the requirement for random testing for about 28 months, and all the tests were negative for alcohol. Further, no test performed during 2007 and 2008 was positive for alcohol. Reports from his employer and those who know him support his testimony and the testing that he has been sober since Thanksgiving 1999.

Respondent was not forthcoming in explaining what occurred in early 2007 that caused him to change his attitude toward probation, which resulted in numerous violations of the conditions relating to random testing and quarterly reports. In 2008, his failure to comply with these conditions may be explained, but not excused by, his back injury and subsequent treatment. The treatment for his back has been successful, and a further consequence of that treatment has been a substantial loss of weight and improvement in his other medical conditions such as diabetes and high blood pressure.

Respondent has not worked as a registered nurse since August 2008 because of his physical condition. At the hearing he testified that he is ready to return to work and has been offered several jobs. He would like to obtain a position that allows him to work as a supervisor but in order for him to obtain such a position, he would have to be off probation. Based on his conduct, while on probation during 2007 and 2008, that is not possible. However, his testimony at the hearing shows a more mature attitude than he exhibited during 2007 and 2008 and offers a suggestion that he will perform better on probation in the future than he did in the past. He should know that he will not receive any more reprieves. Respondent cannot escape his past, and he has not, insofar as his career as a registered nurse

is concerned, put his past behind him. He has shown that he has addressed the reason for being placed on probation, his alcoholism, but his failure to comply with probation shows that he is not ready to have probation terminated. He has shown that he can practice nursing safely while being supervised, but he has not shown that he can do so while not supervised.

Based on these considerations, the most appropriate disciplinary order is to continue respondent on probation, but with probation extended for another three years. He was originally placed on probation for five years, and was successful for 28 months. He had nearly three years left when he began violating the conditions of probation. There is no reason to reduce the length of probation, but no reason to increase it either.

ORDER

Registered Nurse License No. 451779 issued to respondent John Michael Powell is revoked. However, the revocation is stayed, and respondent is placed on probation for three (3) years on the same terms and conditions as those contained in the Decision of the Board in Case No. 2003-48, dated August 26, 2004, which became effective September 26, 2004.

DATED: 3/22/2010


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

COMMON MO
FEDERAL BUREAU OF INVESTIGATION

APR 1 2010

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of the State of California
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7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke Probation
Against:

Case No. 2003-48

12 JOHN MICHAEL POWELL
13 PO Box 6526
Frazier Park, CA 93222

**PETITION TO REVOKE
PROBATION**

14 and

15 JOHN MICHAEL POWELL
16 16525 Mill Potrero Highway
Pine Mountain Club, CA 93222

17 Registered Nurse License No. 451779

18 Respondent.
19

20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Petition to
23 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
24 Registered Nursing, Department of Consumer Affairs.

25 2. On or about March 31, 1990, the Board of Registered Nursing (Board)
26 issued Registered Nurse License Number 451779 to John Michael Powell (Respondent). The
27 Registered Nurse License was in effect at all times relevant to the charges brought herein and
28 will expire on August 31, 2009, unless renewed.

3. In a disciplinary action entitled *In the Matter of Accusation Against John Michael Powell*, Case No. 2003-48, the Board issued a decision, effective September 26, 2004, in which Respondent's Registered Nurse License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

5. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply with Board's Probation Program)

7. At all times after the effective date of Respondent's probation, Probation Condition No. 2 stated:

"Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension."

///

8. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 2, referenced above, in that he failed to comply with the Board's Probation Program. Specifically, Respondent failed to comply with Condition Nos. 5, 11, and 15, referenced below.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Submit Written Reports)

9. At all times after the effective date of Respondent's probation, Probation Condition No. 5 stated:

"Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

"Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license."

10. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 5, referenced above, in that he failed to submit his required quarterly reports in April, July, and October 2007; and April, July and October 2008.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Submit to Tests and Samples)

11. At all times after the effective date of Respondent's probation, Probation Condition No. 15 stated:

"Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that

1 reports are submitted directly by the testing agency to the Board, as directed. Any confirmed
2 positive finding shall be reported immediately to the Board by the program and the respondent
3 shall be considered in violation of probation.

4 "In addition, respondent, at any time during the period of probation, shall fully
5 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
6 tests and samples as the Board or its representatives may require for the detection of alcohol,
7 narcotics, hypnotics, dangerous drugs, or other controlled substances.

8 "If respondent has a positive drug screen for any substance not legally authorized
9 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
10 Board files a petition to revoke probation or any accusation, the Board may suspend respondent
11 from practice pending the final decision on the petition to revoke probation or the accusation.
12 This period of suspension will not apply to the reduction of this probationary time period.

13 "If respondent fails to participate in a random, biological fluid testing or drug
14 screening program within the specified time frame, the respondent shall immediately cease
15 practice and shall not resume practice until notified by the Board. After taking into account
16 documented evidence of mitigation, if the Board files a petition to revoke probation or an
17 accusation, the Board may suspend respondent from practice pending the final decision on the
18 petition to revoke probation or the accusation. This period of suspension will not apply to the
19 reduction of this probationary time period."

20 12. Respondent's probation is subject to revocation because he failed to
21 comply with Probation Condition No. 15, referenced above, in that he failed to make numerous
22 calls to the Board's drug screening program. Respondent failed to communicate telephonically
23 with the Board's drug screening program and further failed to provide documentation to confirm
24 that he was unable to comply with the drug testing due to medical reasons. Specifically,
25 Respondent failed to appear for drug testing as required on the following dates:

26 February 5, 2007-missed test, did not call, on hold;

27 February 16, 2007-missed test, did not call;

28 February 19, 2007-missed test, did not call;

1 June 19, 2007-missed test, on hold;
2 July 5, 2007-missed test, called in, but failed to report for testing;
3 August 10, 2007-missed test, did not call, not calling into the random system;
4 August 29, 2007-missed test, did not call, not calling into the random system;
5 September 6, 2007-missed test, did not call;
6 September 18, 2007-missed test, did not call;
7 May 28, 2008-missed test, did not call;
8 June 5, 2008-missed test, did not call;
9 June 30, 2008-missed test, did not call;
10 July 7, 2008-missed test, did not call;
11 July 9, 2008-missed test, did not call;
12 September 11, 2008-missed test, did not call, on hold;
13 October 1, 2008-missed test, did not call, on hold;
14 November 19, 2008-missed test, did not call, on hold;
15 November 24, 2008-missed test, did not call, on hold; and
16 December 8, 2008-missed test, did not call, on hold.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein
19 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

20 1. Revoking the probation that was granted by the Board of Registered
21 Nursing in Case No. 2003-48 and imposing the disciplinary order that was stayed, thereby
22 revoking Registered Nurse License No. 451779 issued to Respondent;

23 ///

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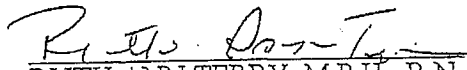
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- 1 2. Revoking or suspending Registered Nurse License No. 451779, issued to
2 Respondent; and
3 3. Taking such other and further action as deemed necessary and proper.
4

5 DATED: 6/17/09
6

7 
8 RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant
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13 POW.PET.WPD
14 5/26/09-IC
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Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2003-48

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

John Michael Powell
P.O. Box 6526
16525 Mil Potrero Highway
Frazier Park, CA 93222

Case No. 2003-48

OAH No. L2003080371

Registered Nurse License No. 451779

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on September 26, 2004.

IT IS SO ORDERED this 26th day of August 2004.

Sandra R. Erickson

President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)

JOHN MICHAEL POWELL)

aka JOHN M. POWELL)

P.O. Box 6526)

16525 Mil Potrero Highway)

Frazier Park, CA 93222)

13713 Yellowstone Drive)

Pine Mountain Club, CA 93222)

Registered Nurse)

License Number RN 451779)

Respondent.)

Case No. 2003-48

OAH Case No. L2003080371

PROPOSED DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Bakersfield, California, on March 12, 2004.

Gus Gomez, Deputy Attorney General, represented Ruth Ann Terry, M.P.H., R.N. ("Complainant").

Phyllis M. Gallagher, Attorney at Law, represented respondent.

Complainant seeks to discipline respondent's license on the bases of two criminal convictions, alleged alcohol-related misconduct associated with the convictions, and alleged alcohol use at work. Respondent stipulated to the truth of some of the allegations and presented evidence in mitigation and rehabilitation.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as Executive Officer, Board of Registered Nursing ("Board"), Department of Consumer Affairs, State of California.

2. Respondent graduated from the College of the Canyons School of Nursing in December 1989. On March 31, 1990, the Board issued Registered License number 451779 to respondent. The license, which has not been previously disciplined, expires on August 31, 2005.

3. Respondent was licensed as a licensed vocational nurse from 1986 until he attained licensure as a registered nurse.

4. a. On February 16, 1999, in the Superior Court, South Division, Lamont Branch, County of Kern, State of California, in case number LM058408A, respondent was convicted, on his plea of guilty, of violating Vehicle Code sections 14601.1(a) (driving with a suspended license) and 23152(a) (driving under the influence of alcohol and/or a drug), misdemeanors. The Court suspended imposition of sentence and placed respondent on probation for three years on terms and conditions that included payment of fines and fees in the amount of \$1,535 and completion of a substance abuse counseling and treatment program.

b. The conviction resulted from respondent's driving under the influence of alcohol on January 12, 1999. Respondent stipulated that on that day he used alcoholic beverages to an extent or in a manner dangerous to himself and the public.

5. On October 12, 1999, in the Superior Court, South Division, Lamont Branch, County of Kern, State of California, in case number LM059211A, respondent was convicted, on his plea of guilty, of violating Vehicle Code sections 4000(a) (driving with an expired registration), 5202 (driving without license plates), 14601.2 (driving with a suspended license), and 40508 (failure to appear), misdemeanors. The Court suspended imposition of sentence and placed respondent on probation for three years on terms and conditions that included service of ten days in county jail and payment of fines and fees in the amount of \$1,831.

6. The convictions set forth in factual finding numbers 4 and 5 are for crimes substantially related to the qualifications, functions, and duties of a registered nurse.

7. Respondent complied with the terms and conditions of probation.

8. Respondent stipulated that on November 25, 1999, while employed at Kern Medical Center in Bakersfield, California as a Hospital Staff Nurse II, respondent used alcoholic beverages to an extent or in a manner dangerous to himself and the public. Respondent further stipulated that he drank alcohol prior to reporting to work, that he tested positive for alcohol use (20% blood alcohol level), and that he was terminated from his employment. No evidence was presented that any patient was harmed by respondent's misconduct.

9. Respondent was very candid and forthright at the hearing. He was contrite and remorseful about his past alcohol and the misconduct associated with the abuse. He provided details about alcohol use commencing at age 13 (he is now 52 years old). He had been clean and sober for 11 years until relapsing in December 1997, when he lost his job. He has again embarked on the road to recovery following the Thanksgiving 1999 incident at Kern Medical Center. He has been clean and sober since that weekend. He has turned his life to God, a support he lacked during prior efforts.

10. The recovery process commenced on November 26, 1999, with respondent's self-referral to the Alta Vista Chemical Dependency Program ("Alta Vista"). He completed the detoxification/full hospitalization phase of the program on December 8, 1999, and was released to a partial hospitalization phase, where he received intensive counseling which included a 12-step program. He was released on December 20, 1999 to continue individual counseling and working through the 12-step program. He continued in individual therapy with a psychiatrist until June 2003, which included treatment with anti-depressant medications.

11. Respondent regularly attends church and church-related activities, such as Bible study. He talks to others at church about his alcoholism to keep them from making the same mistakes.

12. Respondent has gained insight into the triggers of his past alcohol abuse and has a support network on which he relies.

13. His wife of 19 years, his four children, and his three grandchildren are part of his support network. Respondent's wife works as a school nurse and she has not seen respondent drink an alcoholic beverage since he completed the Alta Vista program.

14. Respondent participated in the Board's diversion program during 2000. He terminated his participation because he was unable to attend the required number of Alcoholics Anonymous meetings in his small, remote, community, and because he was unable to work while in the program.

15. Once he was able to return to work, respondent worked as a registry nurse. In February 2003, he has found permanent full-time employment at the Kern Valley Healthcare District in Lake Isabella, California ("KVHD"). He performs a wide range of nursing duties at the small town facility, including working in the emergency room and acting as a supervisor. He typically works three 12-hour shifts per week.

16. Pamela Ott, R.N., Chief Nursing Officer at KVHD, wrote a letter on behalf of respondent. She is aware of his past problems with alcohol and of his convictions, but describes him as a professional nurse who provides quality care, leadership, and mentoring to less experienced staff.

17. Mark Gordon, R.N. ("Gordon"), respondent's immediate supervisor at KVHD, provided testimony at the hearing. He values respondent's excellent clinical skills and professionalism. Respondent and Gordon, also a recovering alcoholic, share their past experiences to gain strength. Gordon has not suspected respondent of being under the influence of alcohol or drugs.

18. The Board has incurred costs in connection with the investigation and prosecution of this matter: charges from the Attorney General's office in the amount of \$5,298.25 (\$3,960 in Deputy Attorney General costs and \$1,338.25 in Legal Assistant costs); expert witness costs in the amount of \$151.25; and charges from the Division of Investigation in the amount of \$2,970. The total is, therefore, \$8,419.50.

19. Except for those previously addressed in this Decision, all other allegations in the accusation are found to be unproved or surplusage.

LEGAL CONCLUSIONS

1. Grounds exist to suspend or revoke respondent's license pursuant to Business and Professions Code sections 490, 2761(f), and 2762(c) in that he engaged in unprofessional conduct by suffering convictions for crimes substantially related to the qualifications, functions, and duties of a registered nurse, by reason of factual finding numbers 4, 5, and 6.

2. Grounds exist to suspend or revoke respondent's license pursuant to Business and Professions Code sections 2761(a) and 2762(b) in that he engaged in unprofessional conduct by consuming alcoholic beverages to an extent or in a manner dangerous or injurious to himself and to members of the public, by reason of factual finding numbers 4 and 8.

3. All evidence submitted in mitigation and rehabilitation has been considered. In brief, the unprofessional conduct occurred over four years ago and has not been repeated. Respondent has recognized his errors and has learned from the experience. He completed a rehabilitation program and has continued his efforts to remain clean and sober. His religious conviction adds an additional support he did not have at the time of his last relapse in December 1997. In light of this evidence, outright revocation of the license is unwarranted. The past substance abuse, however, warrants temporary monitoring for the protection of the public.

4. Cause exists pursuant to section 125.3 to order respondent to pay the Board's costs of investigation and adjudication in this matter, by reason of factual finding number 18 and legal conclusion numbers 1 and 2.

In Zuckerman v. State Board of Chiropractic Examiners, 29 Cal.4th 32 (2002), the Supreme Court rejected a constitutional challenge to a cost regulation similar to section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to

evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the board must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the board must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the board must consider a respondent's ability to pay; and the board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. Zuckerman, supra at 45.

In this case, after giving due consideration to respondent's ability to pay, as evidenced by his employment and living situation, it is reasonable to reduce the costs by one third, to \$5,613 and to allow respondent to make monthly payments of \$93.55 during the period of probation.

ORDER

Registered Nurse License 451779 issued to respondent John Michael Powell, aka John M. Powell, is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

1. OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.
2. COMPLY WITH PROBATION PROGRAM - Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.
3. REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

5. SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

6. FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS -

Respondent shall obtain prior approval from the Board before commencing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisor prior to commencement of any new nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment, when such employment is not as a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any registered nursing, other nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care.- If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall

maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

9. EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. COMPLETE A NURSING COURSE(S) - Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

11. COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$5,613 at the rate of \$93.55 per month during the period of probation.

12. VIOLATION OF PROBATION - If a respondent violates the conditions of her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. LICENSE SURRENDER - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- 1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- 2) One year for a license surrendered for a mental or physical illness.

14. ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled

substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

15. SUBMIT TO TESTS AND SAMPLES - Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.


If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

COMPLETION OF PROBATION - Upon successful completion of probation, the respondent's license will be fully restored.

SEVERABILITY CLAUSE - Each term and condition of probation contained herein is a separate and distinct term and condition. If any term and condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each term and condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

DATED: 4/5/04


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
2 GUS GOMEZ, State Bar No. 146845
Deputy Attorney General
3 California Department of Justice
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5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2003-48

12 **JOHN MICHAEL POWELL**
aka JOHN M. POWELL
13 P.O. Box 6526
16525 Mil Potrero Highway
14 Frazier Park, California 93222

ACCUSATION

15 - and -

16 13713 Yellowstone Drive
Pine Mountain Club, California 93222

17 Registered Nurse License No. 451779

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
23 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
24 ("Board"), Department of Consumer Affairs.

25 2. On or about March 31, 1990, the Board of Registered Nursing issued
26 Registered Nurse License Number 451779 to John Michael Powell, aka John M. Powell
27 ("Respondent"). The license was in full force and effect at all times relevant to the charges
28 brought herein and will expire on August 31, 2003, unless renewed.

STATUTORY PROVISIONS

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3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

5. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

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1 (c) Be convicted of a criminal offense involving the prescription, consumption, or
2 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
3 or the possession of, or falsification of a record pertaining to, the substances described in
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
5 thereof.

6 6. Section 490 of the Code states:

7 "A board may suspend or revoke a license on the ground that the licensee has
8 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
9 duties of the business or profession for which the license was issued. A conviction within the
10 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
11 contendere. Any action which a board is permitted to take following the establishment of a
12 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
13 been affirmed on appeal, or when an order granting probation is made suspending the imposition
14 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
15 Penal Code."

16 7. Section 125.3 of the Code provides, in pertinent part, that the Board may
17 request the administrative law judge to direct a licentiate found to have committed a violation or
18 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
19 and enforcement of the case.

20 **FIRST CAUSE FOR DISCIPLINE**

21 [Conviction of a Substantially Related Offense]

22 8. Respondent is subject to disciplinary action under Code sections 2761(f)
23 and 490 in that he was convicted of the following crimes which are substantially related to the
24 qualifications, functions or duties of the business or profession for which Respondent holds a
25 license:

26 a. On or about February 16, 1999, in Kern County Municipal Court, Case
27 Number LM058408A, entitled *People v. John Michael Powell*, Respondent was convicted by the
28 court on his plea of guilty for violating Vehicle Code section 23152(a) [driving under the

1 influence of alcohol or drugs] and Vehicle Code section 14601.1(a) [driving on a suspended
2 license].

3 The circumstances of the conviction are that on or about January 12, 1999,
4 respondent was cited and later charged with driving under the influence of alcohol and drugs and
5 driving on a suspended license.

6 SECOND CAUSE FOR DISCIPLINE

7 [Conviction of a Substantially Related Offense]

8 9. Respondent is subject to disciplinary action under Code sections 2761(f)
9 and 490 in that he was convicted of the following crimes which are substantially related to the
10 qualifications; functions or duties of the business or profession for which Respondent holds a
11 license:

12 a. On or about October 12, 1999, in Kern County Municipal Court, Case
13 Number LM059211A, entitled *People v. John Michael Powell*, Respondent was convicted by the
14 court on his plea of guilty for violating Vehicle Code section 14601.2(a) [driving on a suspended
15 license for a conviction of violating Vehicle Code section 23152]; Vehicle Code section 4000(a)
16 [expired registration]; Vehicle Code section 5202 [no license plates]; and Vehicle Code section
17 40508(a) [failure to appear].

18 The circumstances of the conviction are that on or about May 18, 1999,
19 respondent was cited and subsequently charged with driving on a suspended license, having an
20 expired vehicle registration, having no license plates, and failing to appear in court.

21 THIRD CAUSE FOR DISCIPLINE

22 [Dangerous Use of Alcohol]

23 10. Respondent is subject to disciplinary action under Code section 2761(a) on
24 the grounds of unprofessional conduct as defined in Code section 2762(b), in that on or about
25 January 12, 1999, Respondent used alcoholic beverages to an extent or in a manner dangerous or
26 injurious to himself, and the public, when he operated a vehicle while under the influence of
27 alcohol or drugs, as set forth in paragraph 8 above.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 8/22/02

For
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant